

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHOBANI, LLC,

Plaintiff,

**COMPLAINT FOR
DECLARATORY JUDGMENT**

v.

Civil Action No.: 3:16-cv-30 (DNH/DEP)

THE DANNON COMPANY, INC.,

Defendant.

Plaintiff Chobani, LLC (“Chobani”), for its complaint against defendant The Dannon Company, Inc. (“Dannon”), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 seeking a determination that Chobani has not made false, misleading, disparaging, or deceptive statements or claims in connection with advertisements for various of its Greek Yogurt products in violation of the Lanham Act and/or New York state law, and alleges as follows:

THE PARTIES

2. Chobani is a Delaware Limited Liability Company with principal offices located at 147 State Highway 320 Norwich, New York.

3. Upon information and belief, Dannon is a Delaware Corporation with principal offices located at 100 Hillside Avenue, White Plains, New York.

JURISDICTION AND VENUE

4. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Chobani seeks a declaration from the Court that none of the advertising claims made by Chobani in

connection with the promotion of its Greek Yogurt products that have been accused by Dannon constitute false or misleading advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) or New York state law.

5. This Court has subject matter jurisdiction in this action pursuant to 28 U.S.C. §§ 1331, 1338, and 2201.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

7. This Court has personal jurisdiction over Dannon by virtue of Dannon's accusations that Chobani has engaged in false or misleading advertising directed against Dannon in this district. In addition, upon information and belief, Dannon resides in this state, regularly does and/or transacts business in this state and district, contracts to supply goods in this state and district, derives substantial revenues in this state and district, and knows or expects its actions to have consequences that may give rise to litigation in this state and district.

**DANNON'S ACCUSATIONS BASED ON ADS FOR
CHOBANI SIMPLY 100[®] GREEK YOGURT**

8. Chobani was established in 2004 and just six years later it became the #1 Greek Yogurt brand in the United States.

9. Chobani is committed to making high quality Greek Yogurt with simple, authentic, and natural ingredients, such as fresh milk from local farmers and wholesome fruit.

10. Chobani Simply 100[®] Greek Yogurt is the only nationally distributed brand of reduced calorie Greek Yogurt that does not contain artificial sweeteners or artificial preservatives.

11. On or about January 6, 2016, Chobani launched a multi-media ad campaign to advertise its Chobani Simply 100[®] Greek Yogurt (the "Simply 100 Campaign"), including

online, print, and television advertising, emphasizing that Chobani's product contains no artificial sweeteners and no artificial preservatives.

12. The Simply 100 Campaign discloses, among other claims, that Dannon Light & Fit Greek Yogurt contains sucralose, an artificial sweetener processed with added chlorine.

13. An example of the advertising, in the form of an "open letter" from Chobani on its website, is attached hereto as Exhibit A.

14. Chlorine is, in fact, added to the sucralose used in Dannon's products.

15. Sucralose is a disaccharide that is made from sucrose in a five-step process that selectively substitutes three atoms of chlorine for three hydroxyl groups in the sugar molecule.

16. The addition of these chlorine atoms converts sucrose (sugar) to sucralose, which is an inert, unreactive substance.

17. Indeed, it is the presence of chlorine that prevents sucralose from being broken down in the body for energy, thus making sucralose intensely sweet and yet non-caloric.

18. Consumers of wholesome products like Chobani's reduced calorie Greek Yogurt are concerned about artificial sweeteners in their food.

19. Chobani's Simply 100 Campaign provides consumers with accurate information to help them make more informed decisions about their food choices, including the choice between natural sweeteners and artificial sweeteners.

20. To further assist consumers, Chobani provides links in its online Simply 100 ads to additional information about sucralose from the Code of Federal Regulations, found on the United States Food and Drug Administration website.

21. The statements made by Chobani in the Simply 100 Campaign, including those set forth in Exhibit A and Paragraph 12, above, were and are true and accurate.

22. Upon information and belief, after the launch of the Simply 100 Campaign, a representative of Dannon disclosed to the press that claims made in the campaign were “untrue and irresponsible” and that Dannon intended “to pursue all available remedies to address Chobani’s misleading and irresponsible advertising.”

23. On or about 6:00 pm on January 7, 2016, counsel for Dannon sent a letter to Chobani via email accusing Chobani of making false, misleading, disparaging, or deceptive statements or claims in connection with the Simply 100 Campaign pursuant to the Lanham Act and/or New York New York state law, and demanded that Chobani immediately discontinue the Simply 100 Campaign.

24. There is an actual controversy between the parties as to whether the statements made by Chobani in the Simply 100 Campaign, including those set forth in Exhibit A and Paragraph 12, above, are false, misleading, disparaging, or deceptive.

**DANNON’S ACCUSATIONS BASED ON
CHOBANI’S SUGAR COMPARISON CLAIMS**

25. Separate and apart from the allegations arising from the Simply 100 Campaign, Dannon has accused Chobani of unlawful conduct in relation to Chobani’s claims that its Greek Yogurt has significantly less sugar than regular yogurt.

26. Specifically, in August of 2015, the General Counsel of Dannon contacted the General Counsel of Chobani and asserted that the following claims on Chobani’s packaging and website were false and misleading:

- Chobani® Greek Yogurt has 40% less sugar than regular yogurt*

*Chobani® Greek Yogurt, fruit varieties, 15g sugar/5.3oz serving (average);
regular fruit yogurt, 29g sugar /5.3oz.

- Chobani Simply 100® has 75% less sugar than regular yogurt*

*Chobani Simply 100® Greek Yogurt, 7g of sugar; regular fruit yogurt, 29g sugar per 5.3oz.

The disclosures accompanying the asterisks refer to information contained in the U.S. Department of Agriculture (“USDA”) National Nutrient Database for Standard Reference (the “USDA Nutrient Database” or the “Database”).

27. The USDA Nutrient Database is the preeminent source for food composition and nutrient information in the United States. It is updated frequently and is a reliable source for scientifically sound data about the nutrient composition of food. Public policy surrounding nutrition and health depends upon the Database and many government programs and initiatives, including but not limited to the federal school lunch program and the First Lady’s Let’s Move! Initiative, regularly use information from the Database. The USDA Nutrient Database provides the United States government’s benchmark data on nutrition and food composition, and advertisers commonly rely upon it to make benchmark comparisons. Indeed, Dannon itself has relied on the Database in making advertising claims and for other purposes.

28. The content of the disclosures in Paragraph 26, above, accurately reflect the information contained in the USDA Nutrient Database at the time that Chobani first made the above statements, and that information continues to appear in the Database today.

29. Chobani’s statements and accompanying disclosures, set forth in Paragraph 26, above, were true at the time that they were first made and are still true today.

30. While Chobani was confident that its position was correct, Chobani engaged in further discussions with Dannon in September and October of 2015 in a good faith effort to resolve the issues in dispute. Following those discussions, Chobani amended the language on its packaging and website to specify that the USDA Nutrient Database is the source of the information for the amount of sugar in regular yogurt.

31. Chobani's new claims, which currently appear on Chobani's website and will appear on Chobani's packaging imminently (as soon as the supply of prior packaging is exhausted), are as follows:

- Chobani® Greek Yogurt has 40% less sugar than regular fruit yogurt, based on USDA Data*

*Chobani® Greek Yogurt (excluding Plain), 13-17g sugar per 5.3oz (150g) serving; regular fruit yogurt, 29g sugar per 5.3oz (150g) serving based upon most recently reported USDA category data.

- Chobani Simply 100® has 75% less sugar than regular fruit yogurt, based on USDA data*

*Chobani Simply 100® Greek Yogurt, 6-8g of sugar per 5.3oz (150g) serving; regular yogurt, fruit variety, 29g sugar per 5.3oz (150g) serving based upon most recently reported USDA category data.

32. The content of the disclosures in Paragraph 31, above, accurately reflects the information contained in the USDA Nutrient Database at the time that Chobani first made the above statements, and that information continues to appear in the Database today.

33. Chobani's statements and accompanying disclosures, set forth in Paragraph 31, above, were true at the time that they were first made and are still true today.

34. Despite the truthfulness of Chobani's statements, Dannon continues to assert that the statements are false and misleading, and made that assertion as recently as December 16, 2015.

35. There is an actual controversy between the parties as to whether Chobani's statements and accompanying disclosures, set forth in Paragraphs 26 and 31, above, are false and/or misleading.

COUNT I

**DECLARATORY JUDGMENT THAT CLAIMS MADE IN CHOBANI'S SIMPLY 100
CAMPAIGN ARE NOT FALSE, MISLEADING, DISPARAGING, OR DECEPTIVE
PURSUANT TO THE LANHAM ACT**

36. Chobani repeats and realleges the preceding paragraphs of its Complaint.

37. An actual controversy exists as to whether claims made by Chobani in its Simply 100 Campaign constitute false, misleading, disparaging, or deceptive advertising pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

38. The claims made by Chobani in its Simply 100 Campaign were and are true.

39. A declaration is necessary and appropriate at this time to affirm that claims made by Chobani in its Simply 100 Campaign do not constitute false and/or misleading advertising under the Lanham Act.

40. Accordingly, Chobani seeks, pursuant to 28 U.S.C. §§ 2201 and 2202, a judgment from this Court declaring that claims made in the Simply 100 Campaign do not violate the Lanham Act.

COUNT II

**DECLARATORY JUDGMENT THAT CLAIMS MADE IN CHOBANI'S SIMPLY 100
CAMPAIGN ARE NOT FALSE, MISLEADING, DISPARAGING, OR DECEPTIVE
PURSUANT TO NEW YORK STATE LAW**

41. Chobani repeats and realleges the preceding paragraphs of its Complaint.

42. An actual controversy exists as to whether claims made by Chobani in its Simply 100 Campaign constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law.

43. The claims made by Chobani in its Simply 100 Campaign were and are true.

44. A declaration is necessary and appropriate at this time to affirm that claims made by Chobani in its Simply 100 Campaign do not constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law.

45. Accordingly, Chobani seeks, pursuant to 28 U.S.C. §§ 2201 and 2202, a judgment from this Court declaring that claims made in the Simply 100 Campaign do not constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law.

COUNT III

DECLARATORY JUDGMENT THAT CHOBANI'S SUGAR COMPARISON CLAIMS ARE NOT FALSE, MISLEADING, DISPARAGING, OR DECEPTIVE PURSUANT TO THE LANHAM ACT

46. Chobani repeats and realleges the preceding paragraphs of its Complaint.

47. An actual controversy exists as to whether sugar comparison claims made by Chobani constitute false, misleading, disparaging, or deceptive advertising pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

48. The sugar comparison claims made by Chobani were true at the time they were and are true.

49. A declaration is necessary and appropriate at this time to affirm that Chobani's sugar comparison claims do not constitute false and/or misleading advertising under the Lanham Act.

50. Accordingly, Chobani seeks, pursuant to 28 U.S.C. §§ 2201 and 2202, a judgment from this Court declaring that Chobani's sugar comparison claims do violate the Lanham Act.

COUNT IV

**DECLARATORY JUDGMENT THAT CHOBANI'S SUGAR COMPARISON CLAIMS
ARE NOT FALSE, MISLEADING, DISPARAGING, OR DECEPTIVE PURSUANT TO
NEW YORK STATE LAW**

51. Chobani repeats and realleges the preceding paragraphs of its Complaint.

52. An actual controversy exists as to whether sugar comparison claims made by Chobani constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law.

53. The sugar comparison claims made by Chobani were and are true.

54. A declaration is necessary and appropriate at this time to affirm that Chobani's sugar comparison claims do not constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law.

55. Accordingly, Chobani seeks, pursuant to 28 U.S.C. §§ 2201 and 2202, a judgment from this Court declaring that Chobani's sugar comparison claims do not constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law.

PRAYER FOR RELIEF

WHEREFORE, for all the foregoing reasons, Chobani demands judgment as follows:

- A. Enter judgment in favor of Chobani on all counts;
- B. Declare that claims made in Chobani's Simply 100 Campaign do not constitute false, misleading, disparaging, or deceptive advertising pursuant to the Lanham Act;
- C. Declare that claims made in Chobani's Simply 100 Campaign do not constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law;
- D. Declare that Chobani's sugar comparison claims do not constitute false, misleading, disparaging, or deceptive advertising pursuant to the Lanham Act;

E. Declare that Chobani's sugar comparison claims do not constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law;

F. Order that Dannon pay Chobani's attorneys' fees and costs as provided by 15 U.S.C. § 1117, N.Y. Gen. L. §§ 349 and 350, and/or pursuant to any applicable law;

G. Grant Chobani such other and further relief as the Court may deem just.

JURY DEMAND

Chobani demands a jury trial on all claims so triable.

Dated: January 8, 2016

Respectfully submitted,

s/ Julia Huston

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